



by means of one "group" summons directed to the place required for service of process on defendants *in their official capacity*.<sup>2</sup>

Therefore, the Clerk of Court shall send the plaintiff one summons and one Form 285 to be completed by the plaintiff as set forth below:

TO: (Name and address of Defendant)

**All named defendants in their official capacity**

**c/o Nebraska Attorney General  
2115 State Capitol  
Lincoln, NE 68509**

The plaintiff shall return the completed forms to the Clerk of Court within 30 days of the date of this Order. The U.S. Marshal will then serve the summons on the plaintiff's behalf, together with the complaint, without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal. Filing no. 33, the defendants' Motion to Dismiss, is denied at this time, but the motion may be reasserted if the plaintiff fails to return the forms for service of process by the Marshal.

Finally, in filing no. 36, the plaintiff requests an enlargement of 30 days after the defendants have reviewed the plaintiff's proposed settlement agreement before the parties resume activity in this litigation. However, because the prospects of settlement are so uncertain, the court cannot grant the plaintiff's request. Accordingly, filing no. 36 is denied.

**THEREFORE, IT IS ORDERED:**

1. That filing no. 28, the defendants' Motion to Strike, is granted;
2. That filing no. 32, the plaintiff's Motion to Stay, is denied;
3. That filing no. 33, the defendants' Motion to Dismiss, is denied at this time, and the plaintiff shall have an extension of time to serve the defendants, in their official capacity, properly; the Clerk of Court shall send the plaintiff one summons and one Form 285 to be completed by the plaintiff as set forth above; the plaintiff shall return the completed forms to the Clerk of Court within 30 days of the date of this Order; the U.S.

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<sup>2</sup>Service on individual-capacity defendants, on the other hand, may not be grouped in one summons. On the contrary, each defendant in his or her *individual* capacity must be named on a separate summons form.

Marshal will then serve the summons on the plaintiff's behalf, together with the complaint, without payment of costs or fees; service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal; the Motion to Dismiss may be reasserted if the plaintiff fails to return the forms for service of process by the Marshal; and

4. That filing no. 36, the plaintiff's Motion to Extend and to Strike, is denied.

DATED this 13<sup>th</sup> day of April, 2006.

BY THE COURT:

s/Joseph F. Bataillon  
JOSEPH F. BATAILLON  
Chief District Judge